

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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MALIBU TEXTILES, INC.,

Plaintiff,

-against- Docket No. 07-cv-4780 (SAS)

CAROL ANDERSON, INC. and CABI, LLC,

Defendants.

-----x

February 5, 2008

11:20 a.m.

Deposition of JOSEPH DICKINSON, taken by
Defendants, pursuant to Subpoena, at the offices
of Lazarus & Lazarus, P.C., 240 Madison Avenue,
New York, New York, before ERIC J. FINZ, a
Shorthand Reporter and Notary Public within and
for the State of New York.

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1 JOSEPH DICKINSON
 13:09:31 2 we made the minor change.
 13:09:33 3 Q. So Ms. Kramm did not create
 13:09:37 4 1967, she created 1717; is that a fair
 13:09:44 5 statement?
 13:09:44 6 A. I don't view that as an
 13:09:45 7 accurate statement.
 13:09:47 8 Q. Well, who created the
 13:09:49 9 original that is referred to in this
 13:09:51 10 document that is Bates stamped 14, the
 13:09:55 11 original of which is in front of you?
 13:09:57 12 A. It's the same pattern.
 13:09:58 13 Q. Okay. It's the same or
 13:10:03 14 it's similar?
 13:10:05 15 . . .
 13:10:05 16 it to you. I could show it to anybody,
 13:10:07 17 just tell me what the difference is.
 13:10:09 18 There is never a time, you need to
 13:10:11 19 understand that if you make a pattern
 13:10:12 20 like this, and I'll do my best to
 13:10:16 21 explain it without boring everybody,
 13:10:18 22 but there are 18,000 individual chain
 13:10:22 23 links, approximately, to make a pattern
 13:10:24 24 like this. You never, almost never
 13:10:25 25 will you have the thing come out

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1 JOSEPH DICKINSON
 13:10:28 2 exactly the way it -- the way the
 13:10:32 3 sketch indicates. A sketch is a
 13:10:34 4 sketch. The fabric comes from the
 13:10:36 5 sketch. It's almost never exactly the
 13:10:39 6 way you want it to be.
 13:10:40 7 The inside of this flower we
 13:10:43 8 made certain changes to fill in the
 13:10:46 9 gaps. So if you're asking me did
 13:10:48 10 Yolanda Kramm make 1967, yes, she did.
 13:10:51 11 We made some minor changes in her
 13:10:55 12 sketch. And I have fabrics here to
 13:10:57 13 support it. But it's minor in nature.
 13:11:02 14 It's just what it is.
 13:11:03 15 Q. Mr. Dickinson, your
 13:11:06 16 document that I've referred to that's
 13:11:08 17 in front of you that's marked as or
 13:11:15 18 Bates stamped now in the photostat as
 13:11:31 19 Paris 14, refers to 1717 as the
 13:11:36 20 original.
 13:11:37 21 A. Um-hum.
 13:11:37 22 Q. Is that correct?
 13:11:38 23 A. Um-hum.
 13:11:39 24 Q. Did Ms. Kramm draw the
 13:11:46 25 original, that being the style that is

1 JOSEPH DICKINSON
 13:11:48 2 referred to as 1717?
 13:11:49 3 A. She did all of them.
 13:11:50 4 Q. She did more than one?
 13:11:52 5 A. The sketch applies, as I
 13:11:54 6 said. That sketch and the draft made
 13:11:57 7 from this sketch applied to all the
 13:11:59 8 patterns.
 13:12:01 9 Q. In front of you now as
 13:12:05 10 Defendants' H is a sketch. Do you know
 13:12:08 11 who drew that?
 13:12:10 12 A. Yeah. Yolanda Kramm drew
 13:12:12 13 that, yes.
 13:12:13 14 Q. And does this have the
 13:12:21 16 . . .
 13:12:25 17 A. It's -- the changes, again,
 13:12:26 18 I don't want --
 13:12:28 19 Q. I just want to ask you the
 13:12:28 20 question.
 13:12:29 21 MS. WOLFF: Don't interrupt
 13:12:31 22 him. Let him finish.
 13:12:32 23 A. You are asking me and I've
 13:12:34 24 told you already. This sketch for all
 13:12:36 25 intents and purposes are the four
 styles I've already said to you,

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1 JOSEPH DICKINSON
 13:12:38 2 including 1967 and 1717.
 13:12:40 3 Q. Which is the difference
 13:12:41 4 between 1717 and 1967?
 13:12:44 5 A. I'll be glad to tell you the
 13:12:46 6 difference in all the patterns.
 13:12:48 7 Sometimes there are yarn differences.
 13:12:50 8 Sometimes there are, in this case this
 13:12:52 9 little white piece --
 13:12:54 10 Q. Referring to Defendants' H.
 13:12:56 11 A. These little white pieces in
 13:12:58 12 it, we made a minor change.
 13:13:00 13 Q. What was the change?
 13:13:01 14 A. Well, it looks like we
 13:13:02 15 closed in some of these white spaces
 13:13:05 16 slightly. To improve the quality of
 13:13:08 17 the fabric -- improve the appearance, I
 13:13:10 18 should say.
 13:13:10 19 Q. And is what we're looking
 13:13:12 20 at, 1967 or 1717, in terms of the
 13:13:17 21 change that you've just referred to?
 13:13:19 22 MS. WOLFF: Object to the
 13:13:19 23 form. This is identified as
 13:13:23 24 Plaintiffs' H, which is a sketch, it's
 13:13:25 25 not a 1967 pattern, a 1717 pattern.

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JOSEPH DICKINSON

14:10:52 2 that that's an accurate statement based
 14:10:54 3 on -- based on communication with Ralph
 14:10:58 4 Mueller and as we were going through
 14:11:01 5 the development stages I do know that
 14:11:03 6 there was contact between Ralph and
 14:11:06 7 Yolanda, and I would assume, or I said
 14:11:12 8 there is a possibility that Ozwind had
 14:11:14 9 also contact with her. Because of the
 14:11:17 10 fact that they both had a relationship.
 14:11:20 11 As you know, it may have been that
 14:11:23 12 Ozwind made the first phone call and
 14:11:25 13 then Ralph took over. Again, I'm not
 14:11:27 14 certain about that, and that's why I
 14:11:30 15 in that way.

Q. But with respect to the statements appearing in the sentence beginning "Ralph Mueller and/or Ozwind Fischbach," is there anything in there that you know of your own personal knowledge to be true, other than things that you know through either Mr. Mueller or Mr. Fischbach?

A. Well, I don't know how to

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JOSEPH DICKINSON

14:11:57 2 answer that other than to say that I
 14:12:00 3 know that Yolanda did the sketch.
 14:12:03 4 Given the fact that I know that she's
 14:12:05 5 the person that did the sketch, I even
 14:12:08 6 looked at paperwork and we were
 14:12:09 7 involved in the thing, given the fact
 14:12:11 8 that I know that to be, I also know
 14:12:16 9 that Ralph and/or Ozwind contacted her
 14:12:19 10 to get the sketch. So I'm just
 14:12:22 11 making -- I'm just really, I guess I'm
 14:12:25 12 adding 2 and 2 together and making 4.

Q. Did you ever speak to Ms. Kramm to confirm that she made the sketch?

A. No.

Q. Did you ever confirm with Ms. Kramm directly that she was contacted by Mr. Mueller or Mr. Fischbach?

A. No.

Q. Did you ever see a piece of paper or a letter or any document that reflects the initial contact between Mr. Mueller or Mr. Fischbach and

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JOSEPH DICKINSON

Ms. Kramm?

A. I don't recall seeing physically any correspondence between the two of them. I mean, I think this was something that was likely done over the telephone. But I never had any reason to see any particular, I just know that that's what happened.

Q. Did Ms. Kramm ever tell you that if Malibu accepted her design she would transfer her rights of copyright in the design in Malibu and she would receive payment for the design?

^{A. No, she never said that to me. But I understand her function, and that is a way of doing business. It's not something that somebody had to tell me.}

Q. So no one told you that?

A. No.

Q. Who told you that?

A. Who told me that they would be assigned the copyright?

Q. Yes.

JOSEPH DICKINSON

A. I don't follow you.

Q. Who told you that?

A. They don't have to tell me, because I've been in this business for a very long time. And it is a way of doing business. You have sketches made, and the moment you purchase that sketch, that is now your property. That is and always has been a way of doing business. I've worked with many people, and if you pick a sketch, you are obligated to pay for that sketch. It is a way of doing business, it's implied, it's accepted. It's never been anything different.

Q. Did Mr. Mueller ever tell you that Yolanda said to him that if Malibu accepted the design she would transfer her rights of copyright to Malibu?

A. Once again, he didn't tell me because he didn't have to tell me. Because that is the way the business is done.

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14:14:42 2	JOSEPH DICKINSON	1	JOSEPH DICKINSON
14:14:44 3	Q. Did Mr. Fischbach ever tell you that if Malibu accepted Ms. Kramm's design, Ms. Kramm had agreed to transfer the copyright to Malibu?	14:16:50 2	A. That was done by Yolanda Kramm.
14:14:49 4		14:16:53 3	Q. And how do you know that that's the draft that was done by Yolanda Kramm?
14:14:51 5		14:16:53 4	A. Well, because, you know, going back in time, when we decided to make the new fabric, okay, I then, the course of events are as follows: I met with Ralph Mueller to discuss the project. Ralph Mueller indicated to me that he was going to use Yolanda Kramm to make the sketch. The sketch was produced. I reviewed the sketch. We sent it to Malibu. So that's how I know she did it. I mean, again, it's pretty obvious that she made it.
14:14:53 6	A. Well, once again, he didn't have to, because it's implied. It is a way of doing business.	14:16:55 5	Q. Do you see that her name is written on the document, Defendants' Exhibit H?
14:14:55 7		14:16:57 6	A. I see her name written here. I do.
14:14:58 8	Q. Forgetting about the implied, did he tell you that?	14:16:59 7	Q. Do you know whose handwriting that is?
14:15:00 9		14:17:01 8	
14:15:01 10	A. No, he didn't have to tell me.	14:17:05 9	
14:15:02 11		14:17:10 10	
14:15:02 12	Q. Did Mr. Mueller tell you that?	14:17:13 11	
14:15:05 13		14:17:14 12	
14:15:06 14	A. No.	14:17:16 13	
14:15:07 16	MS. WOLFF: Asked and answered.	14:17:19 14	
14:15:08 17		14:17:21 15	
14:15:35 18	Q. In the materials in front of you, can you please show me the draft that Ms. Kramm prepared? The materials in front of you, I want to include specifically the materials in Paris 1, which is your folder.	14:17:23 16	
14:15:36 19		14:17:25 17	
14:15:39 20		14:17:31 18	
14:15:45 21		14:17:33 19	
14:15:47 22		14:17:36 20	
14:15:49 23		14:17:43 21	
14:15:51 24	A. In that folder I don't have the original draft. The original draft	14:17:45 22	
14:15:54 25		14:17:48 23	
		14:17:48 24	
		14:17:49 25	

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14:15:57 2	JOSEPH DICKINSON	1	JOSEPH DICKINSON
14:15:59 3	is right here. It's not inside the folder. This is the original draft.	14:17:49 2	A. That looks like mine.
14:16:01 4		14:17:51 3	Q. So you affixed Ms. Kramm's name to Defendants' Exhibit H?
14:16:03 5	Q. And can you please indicate to me which document you're referring to.	14:17:54 4	A. My recollection is that appears to be my printing on that, yes.
14:16:07 6		14:17:56 5	Q. When did you do that?
14:16:07 7	A. It says draft E.	14:17:57 6	A. I would assume I did that in 1998 when we got -- it has a date on it which is 1998. My recollection is that that's when I put it on there, that she was the one that did the sketch. But I know that she did the sketch. So, you know, I'm not sure what your question here is.
14:16:09 8	Q. Is it Defendants' --	14:18:02 7	Q. My question is, do you know whose handwriting that is?
14:16:12 9	A. Is that what it says, I'm sorry, Defendants' E.	14:18:03 8	A. And I indicated that appears to be mine.
14:16:14 10	Q. So the document you're referring to is Defendants' E?	14:18:06 9	Q. And is the date your handwriting?
14:16:15 11		14:18:09 10	A. That appears to be mine too.
14:16:16 12	A. Right.	14:18:11 11	Q. And you put that date on there?
14:16:18 13	Q. And that is the original sketch prepared by Ms. Kramm?	14:18:13 12	A. That appears to be my
14:16:18 14		14:18:15 13	
14:16:21 15	A. Not the original sketch. The original sketch would be	14:18:18 14	
14:16:24 16	Defendants' H was the sketch. The draft is the original which comes from the sketch. That's the way the things are done. First comes the sketch, and then comes the draft.	14:18:22 15	
14:16:25 17		14:18:23 16	
14:16:30 18		14:18:25 17	
14:16:33 19		14:18:26 18	
14:16:35 20		14:18:28 19	
14:16:37 21		14:18:29 20	
14:16:40 22		14:18:30 21	
14:16:42 23	Q. Okay. Who prepared the sketch that is now marked as Defendants' Exhibit H?	14:18:30 22	
14:16:45 24		14:18:32 23	
14:16:49 25		14:18:34 24	
		14:18:34 25	

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1 JOSEPH DICKINSON
 14:34:47 2 A. Both of them, this has a
 14:34:48 3 different net construction here. Well,
 14:34:51 4 you know, we may be, again, these are
 14:34:53 5 just sometimes you've got to make four
 14:34:55 6 five or six of these things before you
 14:34:57 7 get what you want.
 14:35:00 8 Q. This also has a tag 28
 14:35:02 9 coarse, is it?
 14:35:03 10 A. Yes.
 14:35:04 11 Q. Never used?
 14:35:05 12 A. Never used, correct. Same
 14:35:06 13 as the last one. One more attempt.
 14:35:12 14 Q. Then I'm going to show you
 14:35:15 15 a piece, let's look at this one, that
 14:35:18 16 is colored green and has gold petals on
 14:35:23 17 the flowers, I believe. Would you
 14:35:26 18 agree with my characterization?
 14:35:28 19 A. Yeah.
 14:35:28 20 Q. What is this?
 14:35:29 21 A. This is Malibu style 2120.
 14:35:34 22 Q. Do you know who knit that?
 14:35:35 23 A. Paris Lace.
 14:35:38 24 Q. And is this the same as
 14:35:43 25 1967?

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1 JOSEPH DICKINSON
 14:35:45 2 A. Different -- same pattern
 14:35:48 3 work, different ground construction.
 14:35:52 4 Different yarn and different ground
 14:35:53 5 construction. But same pattern work,
 14:35:57 6 exactly.
 14:35:57 7 Q. And the last piece which
 14:36:01 8 with is a white lace that doesn't have
 14:36:04 9 a tag on it, can you tell me what this
 14:36:08 10 is?
 14:36:08 11 A. This is 1967.
 14:36:19 12 Q. I want to go for a moment
 14:36:22 13 to Mr. Fischbach's document, which is
 14:36:30 14 Bates stamped 127, and it's included in
 14:36:36 15 Exhibit C.
 14:36:39 16 When is the last time you
 14:36:41 17 spoke to Mr. Fischbach?
 14:36:44 18 A. I -- yesterday.
 14:36:47 19 Q. Did you speak to him about
 14:36:50 20 the subject matter of this lawsuit?
 14:36:53 21 A. No.
 14:36:54 22 Q. What did you speak to him
 14:36:55 23 about?
 14:36:56 24 A. We are always doing business
 14:36:58 25 together. We spoke about some yarn

1 JOSEPH DICKINSON
 14:37:01 2 that he needed from me. We spoke about
 14:37:04 3 a number of things. We continue to do
 14:37:07 4 business together.
 14:37:16 5 Q. Do you see that the first
 14:37:20 6 full paragraph of Mr. Fischbach's
 14:37:24 7 statement, Bates stamped 127, is
 14:37:30 8 identical except for the address and
 14:37:34 9 the name designations to your
 14:37:40 10 statement, which was Bates stamped 126?
 14:37:46 11 A. I'm looking at it for the
 14:37:48 12 first time.
 14:37:48 13 Q. Thank you for saying that.
 14:37:50 14 Am I correct that you've never seen
 14:37:52 15 this before?
 14:37:52 16 A. Yes, never saw it.
 14:38:08 17 I'm sorry, your question?
 14:38:09 18 Q. Just for the record, am I
 14:38:13 19 correct that you've never seen Bates
 14:38:14 20 stamp document 127 before today?
 14:38:16 21 A. That's correct.
 14:38:16 22 Q. Do you see that it is
 14:38:18 23 identical in the first paragraph --
 14:38:22 24 excuse me, the first full paragraph
 14:38:23 25 after Mr. Fischbach introduces himself,

Acknowledgment of Rights

I, Joseph Dickensen, Chief Executive Officer of Paris Lace Inc. (Paris Lace), of 1300 Main Avenue, Clifton, New York 07011 declare that Malibu Textiles Inc. (Malibu) is the owner of the copyright for Style 1987 for the following reasons.

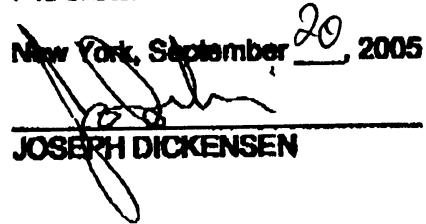
In 1998 Ralph Mueller and Ozwind Fischbach were partners in Linfalls Knitting Mills Ltd. (Linfalls). Malibu was a customer of Linfalls and of Paris Lace. Malibu bought "grey goods" from Paris Lace and Linfalls. "Grey goods" in the lace industry are goods which have a design but no color. Malibu dyes and sells the goods to clothing manufacturers.

As regards Style 1987, in 1998 Malibu approached Paris Lace to obtain a floral pattern. Because of the intricacy of the pattern, Paris Lace sub-contracted Linfalls to obtain and knit the design. Ralph Mueller and/or Ozwind Fischbach contacted Jolanda Kramm, an independent designer living in Brazil, and asked her to submit sketches on the basis that if Malibu accepted her design, she would transfer her rights of copyright in the design to Malibu and she would receive payment for the design.

Malibu approved the sketch for Style 1987 in 1998 and Jolanda was commissioned to prepare a "draft". A "draft" is the technical paper work on how to construct the pattern on a knitting machine. Jolanda was paid by Linfalls, who was reimbursed by Paris Lace. Malibu does not typically directly pay the supplier or the author for the design even though it receives copyright. As a matter of business practice, knitting mills absorb the cost of the design as a way of selling product. Copyright in the Style 1987 was obtained for Malibu.

Linfalls did the initial knitting as Paris Lace did not have the necessary knitting equipment. Because Linfalls was the original knitter, it took charge of obtaining the draft and sketch.

New York, September 20, 2005


JOSEPH DICKENSEN

RICHARD SAMUELS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MALIBU TEXTILES, INC.,

ORIGINAL

Plaintiff,

Civil Action No.

-against- 07-CV-4780 (SAS)

CAROL ANDERSON, INC and CABI, LLC,

Defendants.

March 6, 2008

10:15 a.m.

Deposition of RICHARD SAMUELS, taken by Plaintiff, pursuant to Notice, at the offices of Lazarus & Lazarus, 240 Madison Avenue, New York, New York, before Jowell Falsetta, a certified Shorthand Reporter and Notary Public within and for the State of New York.

RICHARD SAMUELS

1 RICHARD SAMUELS

2 (The requested portion was
3 read.)

4 A. I'm not aware of what that
5 means, no.

6 Q. Are you aware today what that
7 inquiry is directed to? Do you know what a
8 work made for hire is?

9 A. Specifically, no.

10 Q. Generally?

11 A. If you are asking somebody to do
12 something for you that is a work for hire.

13 Q. When you signed this document in
14 August of 2006, did you have an understanding
15 of what a work made for hire was as related
16 to this document, VA registration for pattern
17 2351?

18 A. No.

19 Q. In August of 2006 when you
20 signed this document, did you make inquiry to
21 any person as to whether or not pattern 2351
22 was a work made for hire?

23 A. No.

24 Q. As you sit here today, do you
25 know whether pattern 2351 was a work made for

RICHARD SAMUELS

1 RICHARD SAMUELS

2 did not?

3 A. They did not.

4 Q. Do you know who created pattern
5 2351?

6 A. Yes.

7 Q. Who was that?

8 A. Metritek.

9 Q. And from who do you know that?
10 A. Because Metritek gave us the
11 pattern.12 Q. When you say Metritek gave you
13 the patterns, did they give them to you?

14 A. Me specifically?

15 Q. Yes.

16 A. Me and John together, John
17 Irwin.

18 Q. When did they do that?

19 A. I don't know the exact date.

20 Q. Do you know when this pattern
21 was first knit for Malibu?22 A. The specific date I do not, no.
23 I could find out but I do not know.24 Q. Do you know by whom it was knit?
25 A. By Hope Lace, which is an owner

JOHN IRWIN

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
MALIBU TEXTILES, INC,

Plaintiff,

ORIGINAL

Civil Action No.

-against- 07-CV-4780 (SAS)

CAROL ANDERSON, INC and CABI, LLC,

Defendants.

-----x
March 6, 2008
1:35 p.m.

Deposition of JOHN IRWIN, taken by Plaintiff,
pursuant to Notice, at the offices of Lazarus &
Lazarus, 240 Madison Avenue, New York, New York,
before Jowell Falsetta, a certified Shorthand
Reporter and Notary Public within and for the
State of New York.

JOHN IRWIN

1 JOHN IRWIN

2 relates to copyright, no.

3 Q. Do you know whether pattern
4 number 1967 was a work for hire as it
5 pertains to copyright?

6 A. Could you repeat that, please.

7 MR. LAZARUS: Read that back.

8 (The requested portion was
9 read.)

10 MR. KAPLAN: Copyright law.

11 MR. LAZARUS: Copyright law.

12 A. We have attorneys that
13 understand the definitions of work for hire.
14 We are not in the business of understanding
15 that. We are in the business of creating
16 designs and fashion. So I guess the answer
17 to that would be no.

18 Q. Did you create pattern 1967?

19 A. Yes.

20 Q. When you say you created it, who
21 on the staff of Malibu Textiles created the
22 pattern?

23 A. Well the creation is, was at
24 this juncture was myself and my partner Bert,
25 along with Ralph Mueller.